

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE**

In re:

GEORGE J. KENNEY, JR.

Case No. 17-26304 E

Chapter 13

Adv. Proc. No.

Debtor(s)

GEORGE J. KENNEY, JR.

Plaintiff/Debtor

vs.

BAYVIEW LOAN SERVICING

Defendant/Creditor

and

WEOFFER, LLC

Defendant

**PLAINTIFF'S COMPLAINT TO SET ASIDE THE FORECLOSURE OF 948 WESTERN
PARK BY BAYVIEW LOAN SERVICING**

Plaintiff, the above-named chapter 13 Debtor(s), alleges as follows:

1. This is an adversary proceeding pursuant to Bankruptcy Rule 7001 and arises out of and is related to Debtor's Chapter 13 bankruptcy case. This Court has jurisdiction over this core proceeding pursuant to 28 U.S.C. Secs. 157 and 1334, and by virtue of 11 U.S.C. Secs. 506(a) and 1322(b).
2. That on July 9, 2017 Debtor filed a voluntary petition for relief under Chapter 13 of the United States Bankruptcy Code;
3. That the Debtor(s) case was dismissed on October 5, 2017 for failure to pay;
4. That the Debtor(s) filed an expedited motion to reinstate their case on November 28, 2017;
5. That the Debtor(s) made a full plan payment in early December 2017 but sent said payment directly to the Trustee's office rather than the payment address;

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6. That the Debtor(s) had a hearing on the state in case scheduled for December 21, 2017 at 9 a.m., which was postponed based on the Trustee not posting the payment made in early December 2017;
 7. That the Creditor/Defendant foreclosed on the Debtor(s)' personal residence later that day, December 21, 2017 based on the Trustee postponement;
 8. That the Trustee posted the early December 2017 plan payment on January 8, 2018;
 9. That the Court then reinstated the Debtor(s) Chapter 13 bankruptcy on January 11, 2018; and,
 10. That the Debtor(s) are elderly and were recuperating in a rehabilitation center during the entirety of the Chapter 13, had someone attend the 341 Meeting of Creditors on his behalf because of their injury, had no knowledge of the foreclosure date or that their payment had not posted in early December.

WHEREFORE DEBTOR PRAYS AS FOLLOWS,

For the Court to set a hearing on this matter, that the Court issue an order setting aside the foreclosure of the Debtor's principal residence, known as 948 Western Park, and for any other relief to which the Debtor may be entitled.

/s/ Brian W. Lynn
Brian W. Lynn
P.O. Box 111064
Memphis, TN 38111-1064
(901) 791-1485

CERTIFICATE OF SERVICE

On August 6, 2018, a copy of the foregoing was served via United States Mail (Certified Mail) or electronically to the **Debtor(s); Bayview Loan Servicing; WEOFFER LLC**, 6000 Poplar Avenue, Suite 250, Memphis TN 38119; and to **Case Trustee**.

/s/ Brian W. Lynn
Brian W. Lynn
P.O. Box 111064
Memphis, TN 38111-1064
(901) 791-1485